

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID A. DOWS ,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 04-341 Erie
	:	
KATHERINE E. HOLTZINGER	:	Judge McLaughlin
CONNER, ESQ., Chairman	:	
PENNSYLVANIA CIVIL SERVICE	:	
COMMISSION and JOHN DOE ,	:	
Defendants	:	JURY TRIAL DEMANDED

PLAINTIFF'S PRETRIAL NARRATIVE

Plaintiff, David A. Dows, by his attorney, William Taggart, files the following Plaintiff's Pretrial Narrative Statement.

A. FEDERAL COURT JURISDICTION

Title VII itself confers subject matter jurisdiction on the federal courts to adjudicate violations of the Act. 42 U.S.A. § 2000e-5 (f) (3).

B. CONTENTIONS AS TO LIABILITY

This suit is brought and jurisdiction lies pursuant to Title VII of the Civil Rights Act of 1964, as amended 42 U.S.A. § 2000e-5. The Plaintiff believes that all conditions precedent to jurisdiction under § 706 of Title VII, 42 U.S.A. § 2000e-5(f)(3) have occurred or been complied with. A Notification of Right to Sue Within 90 Days issued, and this Complaint was filed within ninety days of the receipt of the aforementioned Right to Sue letter.

This action is also brought pursuant to the Age Discrimination in Employment Act (ADEA) 29 USC§ 621 et seq. for employment discrimination based on age. The defendant's actions led to United

States Equal Employment Opportunity Commission charges which were cross filed with the Pennsylvania Human Relations Commission.

The State Civil Service Commission as part of its official duties provides, creates and maintains lists of qualified persons for various governmental positions in governmental entities in Pennsylvania and is a gateway, referring source for job seekers. The Commission provides competitive examinations for County caseworker positions and provides the resulting lists to Pennsylvania Counties which request them to staff Office of Children and Youth caseworker positions. These examinations are open to anyone who chooses to take them and meets the examination requirement. The examinations are graded and the results are ranked. When a County Office of Children and Youth chooses to request a caseworker list it is provided.

However, the Civil Service Commission also created and maintains a caseworker intern testing program. The Commission maintains communications with various Pennsylvania colleges with social work major programs, distributes literature about it, informs college students about it at job fairs. The interns are not tested but merely complete an application which is referred to as an examination. The program is designed for college juniors to enroll so that during their senior year they can work as interns in a County Office of Children and Youth. Thus, the program collects mostly female, and almost always young people and delivers them as free labor doing casework. Assuming basic standards are met, the interns track directly into full time casework positions with the county agency.

The Commission does nothing to direct or control whether a county agency requests the competitive examination list or the trainee list. So, a county can meet its recruitment needs as much as it can from a skewed, nonrepresentative pool of mostly young women. The Commission becomes the

collector with a system which disproportionately disadvantages men and older persons wishing to be caseworkers. The commission does nothing to bring balance to this situation. The Commission's creation and maintenance of these two concurrent pathways to caseworker positions has a disproportionate negative impact on male and older persons trying to be county caseworkers.

C. STATEMENT OF FACTS

The Plaintiff, David A. Dows, is an adult citizen of the United States, resides at Rural Route 3, Edinboro, Erie County, Pennsylvania 16412 and was born January 15, 1946. Mr. Dows was employed by the Erie County Office of Children and Youth in Erie County, Pennsylvania from August 2, 2003, to October 10, 2003 when he was wrongfully discharged.. His reinstatement came as the result of the Civil Service Commission refusing the County of Erie petition to remove him from the Civil Service list. He worked again from June 1, 2004 to August 12, 2004 when his employment again ended.

The Pennsylvania Civil Service Commission is an agency of the Commonwealth of Pennsylvania, with its principal office at Post Office Box 569, 320 Market Street, Harrisburg, Pennsylvania 17108-0569. The Commission's chairperson is Ms. Holtzinger who is being sued only in her official capacity as Chair of the Commission.

The State Civil Service Commission as part of its official duties provides creates and maintains lists of persons for various governmental positions in governmental entities in Pennsylvania and is a gateway, referring source for job seekers. Some of these lists are created through competitive examinations open to qualified people of all ages. Other lists are intern lists, created from solicited applications called examinations, but they are not.

Mr. Dows ranked first on the State Civil Service list for County Social Caseworker I or II, meant

the State Civil Service Commission should have been referring Mr. Dows as the appointee for the next available Erie County Office of Children and Youth Services caseworker position, but a person or persons in the Commission chose not to do so.

Mr. Dows' rank on and after the October 12, 2003 bad faith dismissal meant that he should have been among the persons permanently hired as full time employees during the period October 10, 2003 to May 17, 2004.

In December 2003, the Pennsylvania Civil Service Commission's maintenance of a two list system for the same position and its supervision of the intern list caused Mr. Dows to be denied his right to be hired from the competitive Civil Service list and caused and/or allowed the Erie County Office of Children and Youth to hire in his stead the much younger interns Cindy Peterson and Jessica Clark from the nonmerit intern hiring list provided by the State Civil Service Commission.

In December 2003, the State Civil Service Commission provided to the County of Erie a hiring list for part-time caseworkers, an act of cooperation in the County of Erie's scheme to hire from the nonmerit list to avoid hiring from the competitive full time hiring list. As a direct consequence of that Civil Service action the County of Erie hired two people from the part-time list, one of which was converted to full-time status within one month and the other of whom was converted in two months. .

The Pennsylvania Civil Service Commission maintains two lists for each county, other than Philadelphia, for the hiring of county caseworkers. One list is based on competitive examinations and ranking does not take into account age or gender as a factor in ranking candidates. This list is governed by the Civil Service Act and is the list which ranked Mr. Dows first. The second list consists mostly of individuals who have recently completed social work internships as part of their college studies, and the persons on the list are overwhelmingly female and well under forty years of

age.

The use of the nonmerit, noncompetitive intern list causes a disproportionate hiring of female workers and workers under age forty and a disproportionate rejection or non-hiring of male workers and workers over forty years of age. Although various methods could help control the impact of the concurrently operated policies, the Commission has no policy or procedure to mitigate or end this problem.

During the period April 19, 2004 to May 17, 2004 the Erie County Office of Children and Youth used the Civil Service provided list of persons completing internships as its sole source of new caseworkers. In doing so, rather than hiring Mr. Dows as the first person on the competitive exam list, it hired Camille Carideo, Linda Bell, Kristina Kirkpatrick, Angela Lawton, Nicole Johnson and Julia Howser. These new caseworkers are all female caseworkers well under the age of forty. This situation illustrates the outcomes resulting from having these concurrent programs. But for the unresolved request to remove Mr. Dows from the Civil Service list he would have been entitled to have been the first hired among the new crop of caseworkers. The reason for this is that a merit list had been requested. Had the Office of Children and Youth left a position open or requested an intern list Mr. Dows would still not have been hired.

On April 23, 2004 the Civil Service Commission denied the Erie County Office of Children and Youth request to remove Mr. Dows from the eligible lists for County Caseworker I and Caseworker II. This Order states in part, "...but for the pending removal request, his selection for one of these positions would have been mandatory." The Order was not mailed until May 4, 2004 when the County had completed its hiring of people from the non merit intern list and had exhausted the supply of people then available from that list. Unfortunately, the Commission's statement is too

sanguine and belied by its own procedures or absence of same. The County was free under Commission procedures to ask for an intern list. Apparently, only when there are no more interns does the county turn to the merit examination list. The Commission states a neutral position that either list is equally acceptable for hiring. This seeming neutrality favors those on the non merit list. The practical effect is that younger and female people are taken off the top and the merit group brings up the rear, even though the merit group must meet standards even to sit for their test; all ages and genders participate, and the merit group is graded to a true standard.

Mr. Dows' case is by no means moot. Not only has his subsequent employment been less remunerative so that he has economic damages, but Mr. Dows intends to return to a County Office of Children and Youth as a caseworker. People on the intern list and the merit list are allowed to keep their applications on file, indicate multiple counties in which they wish to serve and are allowed to change the designation when their intent changes. The State Civil Service Commission policy and practice of maintaining two lists, one merit, one not, greatly reduces and may well make impossible his being hired in that capacity.

D. RELIEF REQUESTED

The Plaintiff seeks injunctive relief ending the State Civil Service Commission's policy and practice of maintaining or providing to Offices of Children and Youth in the Commonwealth a list of persons who have completed college internships and requiring that the Commission maintain and provide only a competitive examination list for County Caseworker positions. In the alternative Mr. Dows requests equitable relief to be shaped by mediation or imposed by the Court giving the persons on the merit list access to caseworker positions which is substantially equal to the access intern list candidates have. The Plaintiff requests that this Court extend Mr. Dows' time on the merit list by the

amount of time he has been subject to this discriminatory two tier hiring method.

The plaintiff requests that the defendant be ordered to pay the plaintiff all reasonable attorney's fees and costs of the suit and that the Court grant such other relief as may be appropriate..

E. DOCUMENTS

1. The pleadings in this case..
2. All documents provided by either party in discovery and/or in Rule 26 disclosures.
5. EEOC materials including documents issued by the EEOC, or provided by the plaintiff or the defendant.
6. PHRC materials including documents issued by: the PHRC , or provided by the plaintiff or the defendant.
7. All employer investigative files of the Defendant, including Equal Employment Opportunity or Affirmative Action Office or other materials regarding Mr. Dows.
8. All Civil Service Commission investigative files of the Defendant, including Equal Employment Opportunity or Affirmative Action Office or other materials regarding Mr. Dows.
9. All e-mails and other written communications to or from the Civil Service Commission and the Erie Office of Children and Youth and/or the County of Erie regarding Mr. Dows.
9. All communications of the Erie County Office of Children and Youth to from any third parties regarding Mr. Dows,
10. All materials listed by the defendant in its Pretrial Narrative and any revisions thereof or additions thereto and modifications thereof.
11. Depositions of each person deposed in this matter as needed for rebuttal or if witness unavailable .
12. Any documents which may be needed to rebut testimony or documents offered by the Defendant
13. Contents of Erie County Office of Children and Youth employment and management files regarding David A. Dows
14. Pennsylvania Civil Service Commission records regarding David Dows
15. Exploring A County Caseworker Career, a DVD shown and distributed by the State Civil Service

Commission ,

16. December 19, 2005 County Social Casework Intern program memorandum from Benito Martinez to Karlos Deltoro,

17. State Civil Service Commission packet with cover memo and cover letter entitled Internship and Summer Employment Opportunities for College Students, 14 pages.

18. State Civil Service Commission Evaluation Guide for Job Code and Job Titles LO 623-County Caseworker 1, L0624 and L 625-County Caseworker 3, 4 pages.

19. Summary Data for Class Code Lo624, sex, race, veteran status and handicap.

20. State Civil Service Commission Notice for County Social Casework Intern job, 4 pages.

21. State Civil Service Commission Application for County Social Casework Intern.

22. State Civil Service Commission Careers For College Graduates, 28 pages.

23. Office of Children and Youth list removal request of February 20, 2004

24. Governor's Office Management Directive 535.5 September 12, 1996

25. Governor's Office Management Directive 580.34 of October 8, 2004

26. Civil Service list 6889 on or about May 23, 2003

27. Civil Service list 14204

28. Civil Service memo entitled "Civil Service Position"

29. Lists of age ranges and genders on certification of eligibles list.

30. Governor's Office Manual entitled Certification of Eligibles for The Classified Office.

31. Commonwealth of Pennsylvania Governor's Office Management Directive 535.5 Amended, dated September 12, 1996,

32. David Dows Notice of Examination Results October 16, 2002,

33. David Dows Notice of Examination Results November 13, 2002

34. December 21, 2005 Adjudication in Civil Service appeal 23874

35. April 23, 2004 Civil Service Adjudication holding that the County of Erie was in violation of the

Civil Service Act when it makes appointments or enters into contractual arrangements with individuals that avoid Civil Service hiring procedures

36. April 23, 2004 Civil Service Order denying Erie County Petition to remove Mr. Dows from Civil Service list.

37. December 12, 2003 State Civil Service Commission response to November 20, 2003 David Dows' Pennsylvania Right to Know statute inquiry.

38. August 24, 2001 Examination for County Social Casework Intern.

39.. October 19, 2001 Examination for County Caseworker 1, 2 and 3.

40. May 5, 2004 Availability survey for Caseworker 2.

41. Certification of Eligibles for The Classified Service , Commonwealth of Pennsylvania State Civil Service Commission.

42. March 19, 2004 Test Announcement of Examinations for County Caseworker 1, 2 and 3,

43. June 25, 2003 Mr. Dows Notice of Examination Results for Caseworker Local 2,

44. November 2, 2004 Summary Data for Class Code L0618

45. January 7, 2005 Social Casework Interns by birth Date

46. January 21, 2005 Civil Service Commission printout for caseworker 2

47. January 21, 2005 Civil Service Commission printout for Aging Care Mgr. 2

48.. January 21, 2005 Civil Service Commission printout for Caseworker 1

49. January 27, 2005 Erie County OCY Social Caseworker Intern Form

50 January 27, 2005 Erie County Y725 Erie County OCY Caseworker 2 by gender

51 January 27, 2005 Erie County Y725 Erie County OCY Caseworker 2 by birth date

52. Commonwealth of Pennsylvania Governor's Office Directive Number 580.38, date October 8, 2004

53. Benito Martinez form letter to Dear Internship Candidate Examination for County Social Casework Intern (Local government) No Written Test Required reissued August 24, 2001

- 54. Mr. Dows July 22, 2002 Application to Civil Service
- 55. October 20, 1988 Evaluation Guide for L0618 County Social Casework Intern
- 56. 2004, 2005, 2006 Erie Office of Children and Youth budgets
- 57. All materials listed by the defendant in its Pretrial Narrative and any revisions thereof or additions thereto or modifications thereof.
- 58. Any documents which may be needed to rebut testimony or documents offered by the Defendant

F. LENGTH OF TRIAL

Four days.

G. UNUSUAL LEGAL ISSUES

It is impossible. to know which unusually challenging issues will exist at trial until after the resolution of dispositive motions. However, major issues which are known include: the extent to which disproportionate impact by age or gender adequately states a claim, and whether recruitment programs confined to college age persons are discriminatory per se or at least are sufficiently suspect to meet the Plaintiff's initial burden and shift the burden to the defendant to justify such a system.¹

H. WITNESSES

LIABILITY AND DAMAGES

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¹ Discovery did not reveal any certification of the intern program as an approved apprentice program which programs are sometimes exceptions to discrimination law.

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Any witness who may be needed as a rebuttal witness to the defendant's witnesses.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL OF EVERY ISSUE SO TRIABLE

—

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